

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2000-~~TS~~-01867

NO. 2001-T8-00164

JOHN E. SHAVERS, JESCO CONSTRUCTION CORPORATION, A LOUISIANA CORPORATION, AND JESCO CONSTRUCTION CORPORATION, A MISSISSIPPI CORPORATION, APPELLANTS

VERSUS

ANN B. SHAVERS, PLAINTIFF/APPELLEE

C/W

NO. 2001-TS-01519

JOHN E. SHAVERS, DEFENDANT/APPELLANT

VÉRUS

ANN B. SHAVERS, PLAINTIFF/APPELLEE

**CONSOLIDATED APPEALS FROM THE CHANCERY COURT,
HARRISON COUNTY, MISSISSIPPI, FIRST JUDICIAL DISTRICT
(REQUEST FOR ORAL ARGUMENT)**

ORIGINAL APPELLANTS' BRIEF
JOHN E. SHAVERS,
JESCO CONSTRUCTION CORPORATION,
A LOUISIANA CORPORATION, JESCO CONSTRUCTION CORPORATION
OF MISSISSIPPI

**RESPECTFULLY SUBMITTED,
B. G. PERRY
ATTORNEY AT LAW
P. O. Box 815
SOUTHAVEN, MISSISSIPPI 38671
(601)393-4443
MSB NO. [REDACTED]
FOR THE APPELLANTS**

IN THE SUPREME COURT OF MISSISSIPPI

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NO. 2001-TS-01519

JOHN E. SHAVERS, DEFENDANT/APPELLANT

VERSUS

ANN B. SHAVERS, PLAINTIFF/APPELLEE

CERTIFICATE OF INTERESTED PARTIES

Pursuant to Rule 28(a)(1), Mississippi Rules of Appellate Procedure

**Appellants, through undersigned counsel, certify that the following listed persons
have an interest in the outcome of this case. These representations are made in
order that the justices of the Supreme Court and/or the judges of the Court of**

Appeals may evaluate possible disqualification or recusal.

- 1. Mr. Michael Cavanaugh, Esquire
Post Office Drawer 1911
Biloxi, MS 39533
ATTORNEY FOR JOHN E. SHAVERS,
JESCO CONSTRUCTION CORPORATION AND
JESCO CONSTRUCTION CORPORATION OF MISSISSIPPI
Enforcement of PROPERTY SETTLEMENT AND DIVISION,
May 27, 1994**
- 2. Mr. Scott Gibson, Esquire
ATTORNEY FOR ANN B. SHAVERS, PLAINTIFF/APPELLEE
Post Office Box 208
Gulfport, MS 39502
ATTORNEY FEE RECIPIENT WITH HERBERT J. STELLY, SR.
\$1,187.50, CONTEMPT OF COURT, JOHN E. SHAVERS'
FAILURE TO PAY EXPERT WITNESS FEES AS DUE PRIOR TO
TRIAL; ATTORNEY FOR PLAINTIFF IN FAULT DIVORCE**
- 3. Mr. Robert G. Harenski, Esquire
1906 Pass Road
Biloxi, MS 39531
ATTORNEY FOR JOHN E. SHAVERS,
CONTEMPT OF COURT HEARING; OPPOSITION TO
APPOINTMENT OF JAMES A. KOERBER, BUSINESS
VALUATOR, ON BEHALF OF JESCO Construction
Corporation and JESCO Construction Corporation of
Mississippi**
- 4. Mr. L. C. James, Esquire
ATTORNEY FOR JOHN E. SHAVERS, DIVORCE
James & Associates
682 Towne Center Boulevard, Suite 101
Post Office Box 2623
Ridgeland, Mississippi 39158**
- 5. JESCO Construction Corporation
JOHN E. SHAVERS, 100% SHAREHOLDER
A LOUISIANA CORPORATION
15312 Dedeaux Road
Gulfport, MS 39503
JESCO CONSTRUCTION CORPORATION
REQUIRED TO ADVANCE SUMS TO PAY**

**JAMES A. KOERBER EXPERT FEES OF \$22,004.00,
AND ANN B. SHAVERS \$1,187.50 ATTORNEY FEES
HERBERT J. STELLY AND GH. SCOTT GIBSON
ORDERED PRODUCTION OF CORPORATE DOCUMENTS
OF NON PARTY, JESCO Construction Corporation, to
JAMES A. KOERBER, BUSINESS VALUATOR, UNDER
PENALTY OF CONTEMPT OF COURT AND INCARCERATION;
OPPOSED APPOINTMENT OF JAMES A. KOERBER, BUSINESS
VALUATOR.**

- 6. JESCO Construction Corporation of Mississippi
JOHN E. SHAVERS, 50% SHAREHOLDER
638 BAYOU ROAD
BELLE CHASSE, LA. 70037
ORDERED PRODUCTION OF CORPORATE
DOCUMENTS OF NON PARTY, JESCO
CONSTRUCTION CORPORATION to
JAMES A. KOERBER, BUSINESS VALUATOR, UNDER
PENALTY OF CONTEMPT OF COURT AND
INCARCERATION; OPPOSED APPOINTMENT OF
JAMES A. KOERBER, BUSINESS VALUATOR**
- 7. Mr. James A. Koerber, Court Appointed Business
Valuation Expert
Post Office Box 16812
2018 Hardy Street #4
Post Office Box 16812
Hattiesburg, MS 39401
APPROXIMATE \$100,000 PROFESSIONAL FEE BILL
FOR BUSINESS VALUATION, JESCO Construction
Corporation and JESCO Construction Corporation,
Non Marital Assets**
- 8. THE KOERBER COMPANY PLLC
100% OWNED BY JAMES A. KOERBER
2018 Hardy Street #4
Post Office Box 16812
Hattiesburg, MS 39401
BILLING ARM OF JAMES A. KOERBER, EXPERT WITNESS**
- 9. Mr. Edward D. Markle, Esquire
One Canal Place
365 Canal Street, Suite 2300
New Orleans, LA 70130-6519
ATTORNEY FOR JOHN E. SHAVERS, JESCO CONSTRUCTION**

**CORPORATION AND JESCO CONSTRUCTION CORPORATION
OF MISSISSIPPI, OPPOSITION TO APPOINTMENT OF
JAMES A. KOERBER, EXPERT WITNESS, and FEES CHARGED
Enforcement of May 27, 1994 PROPERTY SETTLEMENT
AND DIVISION, ANN B. SHAVERS AND JOHN E. SHAVERS**

- 10. Mr. B. G. Perry, Esquire
ATTORNEY FOR JOHN E. SHAVERS,
JESCO Construction Corporation and
JESCO Construction Corporation of Mississippi
Enforcement of May 27, 1994 PROPERTY
SETTLEMENT AND DIVISION, ANN B. SHAVERS
AND JOHN E. SHAVERS**
- 11. Mr. Michael Ratliff, Esquire
ATTORNEY FOR JAMES A. KOERBER,
BUSINESS VALUATOR/COURT APPOINTED
EXPERT WITNESS FEE DISPUTE
JOHNSON, HALL AND RATLIFF
1300 Hardy Street, 2nd Floor
Post Office Box 17738
Hattiesburg, MS 39404**
- 12. Ann B. Shavers, Plaintiff/Appellee
#46 Flint Creek Road
Wiggins, MS
PLAINTIFF IN FAULT DIVORCE, INTEREST IN
CASTING JOHN E. SHAVERS FOR ALL
EXPERT FEES OF JAMES A. KOERBER IN EXCESS OF
\$100,000 AND PLAINTIFF/APPELLEE'S ATTORNEY FEES**
- 13. John E. Shavers, Defendant/Appellant
17612 Plantation Lane
Gulfport, MS
Enforcement of May 27, 1994, PROPERTY SETTLEMENT
AND DIVISION, OPPOSITION TO APPOINTMENT OF
JAMES A. KOERBER, BUSINESS VALUATOR/
SUPERSEDEAS BOND TO ENFORCE STAY OF DIVORCE
PROCEEDINGS UNTIL DISPOSITION OF APPEALS/
NULLIFYING FAULT DIVORCE OBTAINED WITHOUT
GROUNDS AND JURISDICTION**

14. **Mr. Herbert J. Stelly, Sr., Esquire
Post Office Box 1204
Gulfport, MS 39502
ATTORNEY FOR ANN B. SHAVERS,
PLAINTIFF/APPELLEE, ATTORNEY FEE
RECIPIENT WITH D. SCOTT GIBSON, CONTEMPT
OF COURT, JOHN E SHAVERS, FAILURE TO PAY
EXPERT WITNESS FEES AS DUE PRIOR TO TRIAL;
ATTORNEY FOR PLAINTIFF IN FAULT DIVORCE**
15. **Honorable Wes Teel, Chancery Court Judge, Chancery Court
of Harrison County, Mississippi, First Judicial District,
JUDICIAL APPOINTMENT OF JAMES A. KOERBER,
EXPERT WITNESS/JUDICIAL IMMUNITY OF
JAMES A. KOERBER/DISQUALIFICATION/RECUSAL OF
THE COURT IN SHAVERS V SHAVERS, 99-00193.**

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SECTION 3-5-1(7) MISS. CODE ANNOT

SECTION 9-5-2 MISS. CODE ANNOT

SECTION 11-5-12 MISS. CODE ANNOT

CASES

OBERLIN V. OBERLIN (Miss. 1947)

201 Miss 228, 29 So 82

FACTS OF THE CASE

Ann B. and John E. Shavers commenced their journey through life, through marriage in Long Beach, Mississippi, June 8, 1968 and established their marital domicile in Gulfport, Harrison County, Mississippi; of this union, one child was born, John Anthony Shavers, a major. The bizarre twists of courtroom jurisdictional errors began when Ann filed a complaint for divorce against John E. Shavers, January 25, 1999, in the Chancery Court of Harrison County, Mississippi, First Judicial District, in Gulfport. The case was routinely and randomly allotted to Chancery Judge Margaret Alphonso, and suddenly and strangely switched to Judge Wes Teel, without recusal and/or reallocation of the assigned judge.

In affirming Ann's Rule 8.05 Financial Statement and Required Disclosure, she unassumingly disclosed that she and John were worth 24 million dollars; the assessment prompted the Judge to join the treasure hunt by appointing a Financial Valuator, James A. Koerber to locate the 24 million dollars, at \$150.00 per hour, with no parameters, time-frames, guidelines, proposed budget, or employee group costs containments.

Ann sought the divorce on the grounds of habitual, cruel and inhuman treatment, fault which requires corroboration, against John, multiple grounds of adultery, pursuant to Section 93-5-1, and in the alternative, irreconcilable differences, pursuant to Section 93-5-2. [Appeal #1, Vol 1, p 1,5, RE-]. John denied the complaint and filed a counterclaim on the grounds of adultery, and alternatively on the grounds of irreconcilable differences. [Appeal #1, Vol 1, p 1,14]

FIRST DIVESTITURE OF JURISDICTION OF THE MISSISSIPPI CHANCERY COURT

The Court appointed an Expert Valuator, Mr. James A. Koerber, July 23, 1999, to value the assets of John and Ann for trial; the Temporary and Scheduling Order set trial for November 1, 1999, and ordered John to pay the retainer of the Expert, [without any ceiling on the amount] paragraph 13(d) and provided in Paragraph 12 "[t]his order on its own merits terminates on November 1, 1999, unless extended by the court." [Appeal #1 Vol 1, 11,12 RE] No subsequent formal Order of Appointment was entered by the Chancery Court appointing James A. Koerber as the Court's Valuation Expert; the trial scheduled for November 1, 1999 was postponed and the "Setting and Temporary Order" Order" expired by operation of law on November 1, 1999 on its own

merits, without extension, during its life, "morte."

Ann sued John for Contempt of Court citation for failing to pay James Koerber additional pre-trial retainer fees after the Order of Appointment of James A. Koerber had expired; John sued to enforce the termination of James A. Koerber for cause, as independent Expert Valuator; the Court found John in contempt, of failing to pay an "estimated retainer fee" and ordered John to pay \$5,004.00 under penalty of incarceration within ten (10) days and further ordered "John to continue to pay the amounts sent on invoices from Mr. Koerber as they are received," irrespective of the fact that John had already expended over \$17,000.00 in Valuator Retainer Fees to Mr. Koerber, pre-trial, and John and Ann had a Property Settlement and Division executed between them, May 27, 1994, pretermittting business valuations. [SEE Order of October 3, 2000, Appeal #1, Vol 1, R 80, RE]. The Court further ordered John to produce confidential financial records of his business interests, JESCO Construction Corporation and JESCO Construction which were not parties to the lawsuit, to Mr. Koerber under penalty of contempt of court and possible sanctions of incarceration, even though John produced testimony that Mr. Koerber was belying the confidences of his businesses and even though Mr. Koerber

was listed as an Expert Witness, in an adversary proceeding involving his company, JESCO Construction Corporation, and his divorce proceeding, Ann Shavers v. John E. Shavers, 99-00193 was listed on the Exhibit List in JESCO CONSTRUCTION CORPORATION V. NATIONS BANK CORPORATION, NATIONSCREDIT, AND NATIONSCREDIT COMMERCIAL CORPORATION, Civil Action: 98-1657, I(2) United States District Court for the Eastern District of Louisiana, Exhibits I,IV, [Appeal #1, R Vol 1, RE].

Ann B. Shavers' Judgment for Contempt of Court for failure to pay Expert Fees to James A. Koerber against John E. Shavers, is null and void as a matter of law, due to the fact that the Court's Order Appointing James A. Koerber, its Court Appointed Valuator, July 23, 1999, expired of its own terms, November 1, 2001, without renewal and/or extension prior to its termination, November 1, 1999. And, as such cannot form the predicate for a valid judgment, susceptible of contempt for non-payment. At the time of the Contempt hearing, John E. Shavers had already paid James A. Koerber the sum of \$15,000 for advanced retainers, \$2,224.90 for work product (undetailed), totaling \$17,224.90, for undetailed invoices of fees incurred of (1) \$11,500.00 (Retainer Fee July 2000) (2) \$13,500.00 (Retainer Fee

July 2000) (3) \$923.00 (August 2000) (4) \$750.00 Court Appearance (September, 2000) (5) \$505.00 Court Hearing, October 2, 2000.[Appeal #1, Exhibits] The contempt charge for the sum of \$8500.00, in actuality is an additional Retainer Fee in the amount of \$13,500.00, less payment of ½ retainer or \$5,000.00, leaving \$8500.00 as remainder, for which John E. Shavers was cast in Money Judgment May 3, 2000, for an "estimated remaining retainer balance of \$8500.00, plus an invoice for \$574.00," after the Order of Appointment Of James A. Koerber had expired.

To compound the confusion, the Court ruled that John E. Shavers was in contempt of Court for failing to pay the "estimated remaining balance of retainer" in the amount of \$5,004.00, and ordered John E. Shavers to pay the irregular sum of \$5,004.00, as "money owed to date," as an additional fee retainer. The money owed to date is a statistical compilation of \$923.00 (August 2000); \$2,086.50 (September, 2000) and (4) \$505.00 Court Hearing, October 2, 2000, totaling \$5,004.00.

John E. Shavers and his corporations, in which he had financial interests, and from which entities private and privileged discovery was sought, filed a Joint Suspensive Appeal to the Mississippi Supreme Court through counsel, in the nature of Section 11-51-12 Mississippi Code Civil

Practice and Procedure, and pursuant to Rules 3 and 4, Mississippi Rules of Appellate Procedure, requested a suspensive appeal bond be set by the Court. [Appeal #1, Vol 1 p 95,96, RE] John E. Shavers satisfied the money judgments in the separate amounts of \$5,004.00 and \$1,187.50, totaling \$6,191.50, reserving his right of supersedeas appeal, appealing all portions of the final judgment of contempt, except paragraphs 5 and 12. The appeal of the contempt order, together with the posting of the supersedeas appeal bond, January 5, 2001, divested the Chancery Court of jurisdiction to proceed and further operates as a stay of the effects of the judgment, until disposition on the merits by the Mississippi Supreme Court.

Counsel for John E. Shavers, defendant and parties-in-interest, JESCO Construction Corporation, and JESCO Construction Corporation of Mississippi, joint appellants filed notice to all attorneys of record in Shavers v Shavers:

December 1, 2000

Gentlemen:

In view of the appeal before the Supreme Court of Mississippi presently pending, no further discovery, payments, interview, depositions are to be expected. By statute, this appeal is with supersedeas. (Section 11-51-12, M.C.A.) [Appeal #1, Vol II, p 159, RE-159]

S/ B. G PERRY

Attorney

The judgment remains stayed until release of the supersedeas bond.

SECOND DIVESTITURE OF JURISDICTION
MISSISSIPPI STATE COURTS

On January 2, 2001, Defendant/Appellant filed a Notice of Federal Removal of Ann B. Shavers' Motion for Contempt and Incarceration, scheduled for trial January 4, 2001 in Biloxi, MS in Shavers v. Shavers, Civil Action 99-00193, filed contra to the previously filed Supersedeas Appeal of Money Judgment for Business Valuator, James Koerber, Appeal No #200-TS-01867[#1], replete with the filing of statutory notice {Title 28:1441, et seq United States Code to the Clerk of the Chancery Court, Harrison

County, Mississippi, First Judicial District [#2R Vol 3 of 5 [316,322] RE] and an Emergency Motion for Stay Pending Appeal (Divorce & Marital Assets Trial, January 22, 2001) [#2R Vol 3 of 5 p 340], as provided in Section 11-51-12 Mississippi Code Annotated to allow appellant his absolute right of appeal prior to trial on the merits, and a STAY Pending Appeal, to effect the Second Divestiture of Jurisdiction of the Mississippi Chancery Court.

Irrespective of the Federal Removal, the Trial Court, the Honorable Wes Teel, proceeded with the trial, January 4, 2001 denying John E. Shavers' Application for Judicial Disqualification/Recusal [#2R-487] and rendered a Contempt Judgment against Defendant/Appellant, John E. Shavers January 4, 2001 and ordered John to pay Mr. James Koerber his current balance of \$8,630.00 within 20 days of January 4, 2001, and said amount shall constitute a judgment against the defendant. Any judgment rendered after Federal Removal and before remand is an absolute nullity, including the second Civil Contempt Judgment, \$8,630.00; judgment for attorney fees awarded to Michael Ratliff, attorney for James Koerber \$2,166.92; and judgment for costs awarded to Mr. Koerber \$741.00, rendered in complete disregard of the stay pending appeal.

Under penalty of contempt, the Court assessed attorney fees and costs jointly against Mr. Perry John Shavers, to be paid in full twenty (20) days from January 4 2001. The State Court further denied Federal Removal and further denied the Federal automatic stay of the Divorce and Marital Assets Trial, ruling as follows:

"He wants a stay of proceedings pending his appeal of proceedings pending his appeal of the October 3 2000 Order. If the Court issues a stay, this Court shall gladly comply." [See Order, January 8, 2001, p 15]

On January 12, 2001, Defendant/Appellant John E. Shavers filed a Motion for Rehearing/Relief Order of January 8, 2001, [#2 R Vol 4 of 5 p 558] in the Chancery Court predicated on absence of jurisdiction in the Mississippi State Court during Federal Removal and a corollary Notice of Supersedeas Appeal from Judgment of January 8, 2001 to the Mississippi Supreme Court [#2 R Vol 4 of 5 p 577]

THIRD DIVESTITURE OF JURISDICTION
MISSISSIPPI CHANCERY COURT

On January 5, 2001, John E. Shavers posted the Supersedeas Bond for Appeal, as set by the Court, January 4, 2001, securing the mandatory injunction and/or stay pending appeal. Irrespective of the mandatory stay, the Court violated the constitutional rights of all Joint

Appellants, John E. Shavers and his companies, JESCO Construction Corporation and JESCO Construction Corporation Of Mississippi, and proceeded with discovery under penalty Of contempt of court and divorce trial on the merits.

With the posting of the supersedeas bond set by the Court, January 5, 2001, for consolidated appeals of Civil contempt judgments, the appeal not only divest the lower Court of the power to proceed and render judgments, but also Operates as a supersedeas to effectuate the stay of the judgment appealed, pursuant to Section 11-51-12(4), Mississippi Code Annot. The effect of the Stay Pending Appeal, pursuant to Rule 8, Mississippi Rules of Appellate Procedure is to nullify all orders, judgments, and decrees rendered by any Court in derogation/violation of the Stay Pending Appeal, and entitles defendant/appellants to all damages, costs, and attorneys' fees incurred due to abrogation of the Court-Ordered Stay by any party, person, entity, or corporation, during the pendency of these consolidated appeals, and the nullification of all orders/judgments/decrees issued in violation of the stay.

In the Shavers' case, Appellants would tender the Docket Sheet, disclosing all court actions taken since November 1, 2000, some seventeen months of constant violation of the

court mandated injunctions/stays pending appeal established by Mississippi State Statute, Section 11-51-12, Miss. Code Annot. and Mississippi Rules of Appellate Procedure, Rule 8, STAY OR INJUNCTION PENDING APPEAL, forests of trees and legal expenses.

The Mississippi Supreme Court recognized the Federal Removal filed January 2, 2001, in Civil Appeal-TS-01867, and stayed the State Court Appeals [Appeal #3 (2001-TS-01569, Vol 1, 134)], ruling the Emergency Motion to Stay Divorce proceedings moot.

The lower Court, the Honorable Wes Teel, Chancellor proceeded with the Shavers' Divorce trial May 29-June 1, 2001, irrespective of the Federal Removal, in derogation of the absolute jurisdiction of the Federal Court, and rendered Final Judgment of Divorce, June 1, 2001 "nunc pro tunc", without jurisdiction. Order of Remand was rendered August 13, 2001 and filed August 17, 2001 in the Chancery Clerk's file Shavers v. Shavers, Civil Action: 99-00193, re-investing jurisdiction in the Mississippi State Chancery Court to proceed with the case, and re-investing jurisdiction to pursue the consolidated Supersedeas Appeals.

FOURTH DIVESTITURE OF JURISDICTION
MISSISSIPPI CHANCERY COURT

On September 19, 2001, John E. Shavers filed a partial

and limited Notice of Appeal from Final Judgment of Divorce on Fault [Appeal #3, R Vol 1 of 1, p. 117], granted orally in open Court by the Honorable Wes Teel without jurisdiction June 1, 2001, "nunc pro tunc" August 23, 2001, from Judgment Ordered and filed September 7 2001, appealing solely sub-part Paragraph 4 in its entirety and solely the date, August 23, 2001, sub-part, paragraph 6, namely, the Fault Divorce and the date of the Fault Divorce.

Citing "scrivener's error", the Court corrected the Judgment of Fault Divorce ex parte pursuant to Rule 60(a) Mississippi Rules of Civil Procedure and corrected the date of the Settlement Agreement and divorce to June 1, 2001, "nunc pro tunc".

Defendant/Appellants have sought Emergency and Extraordinary Relief in the nature of Motions to Stay all lower Court proceedings Pending Appeal, with supersedeas in both the lower Chancery Court and in the Mississippi Supreme Court and have filed and noticed for hearing a Motion for Relief of Judgment pursuant to Rule 60(b)(3) Mississippi Rules of Civil Procedure in the Chancery Court on the grounds that the Divorce Judgment is null and void as a matter of law.

STATEMENT OF THE CASE

Ann and John married in Long Beach, Mississippi, June 8, 1968, having one child together, John Anthony Shavers.

Ann B. Shavers sued John E. Shavers for divorce on January 25, 1999, in the Chancery Court of Harrison County, Mississippi, First Judicial District, on the fault ground of habitual, cruel and inhuman treatment, and in the alternative irreconcilable differences, further seeking alimony pendente lite; lump sum and periodic alimony, attorney's fees and suit fees. [R-2, RE-] The divorce case was allotted to Judge Margaret Alphonso, Chancellor.

On August 18, 1999, plaintiff amended her complaint to include an additional fault ground of adultery. [R-5, RE-] Defendant, John E. Shavers answered by denying the allegations of fault and contemporaneously filed a counterclaim against Ann suing Ann for divorce alleging a pattern of adultery, habitual cruel and inhuman and alternatively seeking a divorce on the ground of irreconcilable differences [R-11, RE-]. John attached to the Counterclaim as Exhibit "A", a "Property Division and Settlement" executed by the parties, May 27, 1994.

Irrespective of the previous Property Division and Settlement between John and Ann, the Trial Court ordered that James A. Koerber automatically be appointed Evaluator as the Court's own expert, in the event that the parties could not agree upon an expert evaluator to appraise the assets of the parties, and further ordered John to pay the retainer fee of the expert, in the Setting and Temporary Support Order, rendered and signed July 23, 1999, and set the divorce trial on November 1, 1999, with a proviso that the Order expired on its own merits, November 1, 1999, unless extended by the Court, [R-Appeal #1, Vol 1, p 12, Re-].

The Order Appointing James A. Koerber expired, without extension by the Court, November 1, 1999.

On April 7, 2000, the Trial Court entered a Partial Declaratory Judgment on John Shaver's Property Settlement and Division Agreement of May 27, 1994, finding that:

(1) the contract in question is a valid and enforceable agreement between the parties; (2) by law husbands and wife may Contract with each other.

On May 4, 2000, the Trial Court (1) appointed Mr. Sanderson of The Sanderson Group to appraise the personalty of the parties; (2) authorized Mr. Koerber to hire Sanderson and instruct Sanderson as to his duties;

(3) ordered John to pay for the costs of the appraiser, Sanderson, (estimated to be \$4,000.00); and further ordered John to pay "the remaining balance due to Mr Koerber (estimated to be \$8,500.00), plus an invoice for \$574.00," reserving unto the Court the question of to whom ultimately these costs shall be assessed.

On August 10, 2000, Ann filed a Complaint to Cite John for Contempt and other relief, seeking incarceration of John in the Harrison County Jail for failing to pay the remaining balance due to James Koerber in the amount of \$8500.00, plus an invoice for \$574.00, and the costs of the appraiser Mr. Sanderson of the Sanderson Group in an amount estimated at \$4,000. [Appeal #1, R Vol 1, p 74, RE]

On May 4, 2000, the Court orally rendered the following Order and signed same on May 8, 2000: (1) denied John's Motion to Remove James A. Koerber, as the Court's Expert for bias or prejudice, and inappropriate actions of violations of confidentiality; (2) held John in contempt of court, for failing to pay the fees of James A. Koerber, and ordered John to pay the amount of \$5,004.00 to Mr. Koerber in seven (7) days, reserving further sanctions, including, but not limited to incarceration, pending compliance, (3) ordered John to pay the amounts sent

on invoices from Mr. Koerber as they are received,
(4) ordered John to turn over subpoenaed documents,
listed in Exhibit 1 to Mr. Koerber within 10 days, failure
to do so to be contempt of court; and (5) awarded Ann
the sum of \$1,187.50 for attorney's fees for prosecution of
the contempt complaint. [Appeal #1, R-Vol 1, p 79-82, RE]

John E. Shavers, JESCO Construction Corporation and
JESCO Construction Corporation of Mississippi, affected
Corporations, in which John had a financial interest,
filed a Joint and timely Suspensive Appeal from the October
3, 2000 Order, November 1, 2000 and posted a Supersedeas
Bond set by the Court [Appeal #2 Vol IV, p 490-494, Re-] in
the amount of \$7,000, effecting the stay pending appeal, in
accordance with Section 11-51-12, Mississippi Statutes
Annotated. [Appeal #1 Vol 1, p.95, Re], January 5, 2001.

Irrespective of the Suspensive Appeal and Supersedeas
stay, from the October 3, 2000 Order, the Trial Court
continued the divorce proceedings, and denied John's Motion
to Stay Divorce and Marital Assets Trial and Request for
Judicial Notice of Supersedeas and/or stay pending
suspensive appeal. [Appeal #2 Vol 1 pp 119-120, 121, RE- ,
Appeal #2 Vol 4 pp 499-501, Re-]

On December 11, 2000, John filed an Application to
Senior Chancery Court Judge, Honorable J.N. Randall to

review the re-allotment/re-assignment of the divorce case to Judge Wes Teel from Judge Margaret Alphonso seeking recusal of Judge Wes Teel [Appeal #2, R Vol II, pp 160,161, RE-] and amended the Application on grounds that Judge Wes Teel's law firm had handled a workman's compensation adversary proceeding against John Shavers and Jesco Construction Corporation, setting both for expedited hearing, December 15, 2000. [Appeal #2, R Vol 2 p 266, RE-]

On January 2, 2001, John filed an additional Emergency Motion for Stay Pending Appeal (Divorce & Marital Assets Trial, January 22, 2001, pursuant to Section 11-51-12(3) Mississippi Statutes Annotated in both the Trial Court [Appeal #2 R Vol 3, pp 340-343, RE] and the Mississippi Supreme Court, and subsequently on January 2, 2001, a Notice of Federal Removal to the United States District Court for the Southern District of Mississippi, from Ann Shaver's Motion for Contempt and incarceration, in violation of the supersedeas stay, pending appeal. [Appeal #2, R Vol 3, pp 316, RE-]

Irrespective of the supersedeas stay and Notice of Federal Removal, the Trial Court proceeded without jurisdiction in the lower Chancery Court on January 4, 2001, and rendered an Order (1) denying recusal (2) setting

supersedeas bond at \$7,000 (3) denying Motion to Stay Divorce and Marital Assets Trial set for January 22, 2001 and further denying Emergency Motion for Stay Pending Appeal (4) upsetting trial date of January 22, 2001 and requiring all counsel to contact the Court Administrator and select a new trial date (5) allowing plaintiff, Ann Shavers, to file Answer to Counterclaim (5) requiring all discovery concluded by midnight, February 4, 2001 (6) declaring temporary order, rendered July 23, 1999, which expired on November 1, 1999 binding and in full force and effect (7) lifting all previous restrictions on discovery (8) finding John in Contempt of Court and ordering John to pay James Koerber the sum of \$8,630.00, withholding and reserving the Court's ruling on incarceration; ordering John E. Shavers and B. G. Perry to pay the sum of \$741.00 to James A. Koerber; and Ordering John E. Shavers and B. G. Perry to pay the sum of \$2,166.92 to Michael Ratliff, Attorney for James A. Koerber; (9) denying the recusal/disqualification of Herbert Stelly, Sr. as attorney for Ann B. Shavers for conflict of interest and (10) making a judicial finding that the Court had jurisdiction to proceed, irrespective of Federal Removal and Supersedeas Stay Pending Appeal. [Appeal #2, R Vol 4, pp 499-511, RE]

John E. Shavers filed both a Petition for Rehearing/

New Trial from the January 8, 2001 Order, January 12, 2001 [Appeal #2 Vol p 558, RE] and a Notice of Suspensive Appeal to the Mississippi Supreme Court, January 23, 2001 [Appeal #2, Vol 577- 580, Re], appealing, *inter alia* the Final Money Judgment in the amount of \$741.00 in favor of James A. Koerber, and against John E. Shavers and B.G.Perry; Final Money Judgment in the amount of \$8,630.00, in favor of James A. Koerber and The Koerber Company PLLC and the Final Money Judgment in the amount of \$2,166.92, in favor of Michael Ratliff and against John E.Shavers and B.G. Perry, which judgments have been satisfied, reserving rights of appeal.

On February 8, 2001, the Mississippi Supreme Court, recognized the Federal Removal, and rendered "moot", John E. Shaver's Emergency Motion to Stay Divorce and Marital Assets Trial concurrently filed in both the lower Court and the Mississippi Supreme Court. [Appeal #2, Vol 1, p. 134, RE -]

The trial in Shavers v Shavers proceeded as scheduled May 29, 2001, without jurisdiction, and on May 29, 2001, the parties, John and Ann entered a Consent Agreement to Divorce on the Grounds of Irreconcilable Differences, withdrawing all grounds

of fault, excepting adultery of both parties, replete with Request that the Court decide Controverted Issues between the parties. John and Ann filed the Consent Decree in the record on the first day of trial, May 29, 2001; the Trial Court approved the agreement. [Appeal #3, Vol 1, pp 79-81 RE]

On June 1, 2001, the parties entered a Settlement Agreement into the record of the proceedings [Appeal #3, Tr, pp 328-345, RE] which the Court ruled adequate and sufficient, as announced by the parties and the Trial Court irrespective of the fact that the Trial Court had previously ruled in its Declaratory Judgment Order that (1) the Property Settlement and Division executed between the parties May 27, 1994 is a valid and enforceable agreement between the parties; (2) by law husbands and wife may contract.

To conclude the Divorce trial after three and one-half years of legal wrangling, the Court orally granted Ann B. Shavers a Fault Divorce against John E. Shavers on the grounds of habitual, cruel, and inhuman treatment, canceling the bonds of matrimony between John and Ann, reserving unto the parties the right to substitute an Irreconcilable Differences Judgement of Divorce, when reduced to writing, signed and presented to the Court.

[Appeal #3, Vol 1 p 84-91, RE]

On August 17, 2001, the Federal Court issued its certified Order of Remand to the State Court, allowing the State Court to proceed. [Appeal #3, Vol 1 p 82,83, RE] On September 7, 2001, the Trial Court reduced to writing and signed the Judgment of Divorce on the fault grounds of habitual, cruel and inhuman treatment, together with the settlement regarding support matters and property division, which the Court approved as adequate and sufficient, adopted as the Order of the Court.

On September 19, 2001, the defendant, John E Shavers timely appealed, in part, the Judgment of Divorce on the grounds of fault of habitual, cruel, and inhuman treatment, exclusively paragraph 4, and solely the date August 23, 2001 in paragraph 6, leaving the remainder of the judgment without appeal. [Appeal #3, Vol 1, p 98, RE] to the Mississippi Supreme Court. The provisions of the Judgment involving Property Division and Support Matters were specifically not appealed, by either party.

On September 20, 2001, the Defendant/Appellant, John E. Shavers filed an Amended Notice of Appeal to correct a legal citation to Rule 3,4 Mississippi Rules of Appellate Procedure, and, in all other respects, the

Judgment remained the same. [Appeal #3, Vol 1 p 109,
RE].

On September 28, 2001, the Chancery Court, on its Motion, pursuant to Rule 60(a) Mississippi Rules of Civil Procedure, corrected the date of the Settlement Announcement from August 23, 2001 to June 1, 2001, and corrected both the date of the Settlement Announcement in Paragraph six(6), page two (2) and the date of the order of the Judgment of Divorce to read "*nunc pro tunc*" June 1, 2001. [Appeal 3 Vol 1 p 117-119, Re]

By Order of the Mississippi Supreme Court, all three pending appeals in Shavers v Shavers 99-00193 are consolidated for judicial review, as timely appealed. This appeal is with supersedeas, from a timely filed supersedeas bond, January 5, 2001.

SUMMARY OF THE ARGUMENT

The Trial Court exceeded its jurisdiction in granting a Judgment of Fault Divorce in favor of Ann B. Shavers and against John E. Shavers on the grounds of habitual cruel and inhuman treatment, June 1, 2001 "nunc pro tunc" MS ST s 93-5-1 wholly without jurisdiction over the person; subject matter; and venue, which amounts to manifest error because the statutory requirements for Mississippi fault divorce were not met. The Transcript on Appeal of Shaver's Divorce trial evidences that Ann B. Shavers failed to meet her burden of proof, with the testimony of a corroborating witness, on any of the twelve statutory grounds for divorce, except that of adultery. Ann Shavers is not entitled to a Judgment of Divorce on grounds of fault due to the fact that she has filed an admission to adultery in the Consent Decree for Irreconcilable Differences filed in the divorce proceeding, precluding a fault divorce against John E. Shavers on any grounds. See Oberlin v. Oberlin (Miss. 1947) 201 Miss 228, 29 So.82.

It is axiomatic that the judicial requirements of a valid Mississippi judgment with the

effects of res judicata be complied with to render a valid Mississippi divorce: (1) jurisdiction over the person (2) jurisdiction over the subject matter (3) venue.

Judicial Notice must be taken that the Final Judgment of Fault Divorce is null and void, entered during the pendency of exclusive Federal jurisdiction, pursuant to the Federal Removal statute, Title 28:1446(d) United States Code and Rule 60(b) (4) Mississippi Rules of Civil Procedure:

Title 28:1446(d) USC provides:

(d) Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the Notice with the State Court, which shall effect the removal and the State Court shall proceed no further unless and until the case is remanded.

Rule 60(b) (4) Mississippi Rules of Civil Procedure provides in relevant part:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons:

(4) the judgment is void.

The finding of the Trial Court that it enjoyed (1) jurisdiction over the persons and (2) jurisdiction over the subject matter in the Judgment of Divorce, while the Clerk of Court and court file were noticed that the cause was pending in the Federal Court constitutes manifest error,

and requires this Court to declare the Judgment of Divorce a nullity, and to reverse and render the nullity judgment, with all attorneys' fees and costs taxed to Ann B. Shavers.

In the alternative, the parties entered into a Consent to Divorce On the Grounds of Irreconcilable Differences, the first day of trial, May 29, 2001, pursuant to Section 93-5-2, Miss Code Annot and filed it into the Trial Court Record; and obtained the approval of the Chancellor, Wes Teel, to withdraw all grounds of fault alleged in any and all petitions/original pleadings, excepting adultery, pretermittting a fault divorce, on grounds of habitual cruel and inhuman treatment as a matter of law.¹ On June 1, 2001, the parties, Ann B. and John E. announced their settlement agreement in the Trial record, which the Court adopted as adequate and sufficient.

¹ THE COURT: I have in hand a Stipulation and Consent to Divorce signed by both parties. The Court does hereby specifically approve of this and we will proceed along those lines. They've agreed to a divorce on Irreconcilable Differences and have set forth the matters That the Court will determine and then that is what we shall do. All right. Let us proceed. Mrs. Shavers would have the burden of going forward. [Appeal #3, Trial Transcript Vol 1, p. 12

ARGUMENT

I. WHETHER THE JUDGMENT OF FAULT DIVORCE IN FAVOR OF ANN B. SHAVERS AND AGAINST JOHN E. SHAVERS IS AN ABSOLUTE NULLITY?

II. WHETHER THE JUDGMENT OF FAULT DIVORCE IN SHAVERS V. SHAVERS IS UNCONSTITUTIONAL AND DENIES DEFENDANT "DUE PROCESS OF LAW"?

The Final Judgment of Fault Divorce between Ann B. Shavers and John E. Shavers, irrespective of the nearly four-year journey to its conclusion, is null and void. The Federal Removal statute is controlling in this case: this Honorable Court, prior to Divorce and Marital Assets trial in the Chancery Court, recognized the absolute and exclusive jurisdiction of the Federal Court in Ann B. Shavers v. John E. Shavers, removed from the Chancery Court to the United States District Court for the Southern District of Mississippi, January 2, 2001, as its first case of the third millennium, bearing Civil Action: 1:cv:01.

The Federal Removal statute, Title 28:1441, et seq. inter alia is to be strictly construed and specifically provides in relevant part:

"Promptly after the filing of such notice of removal of a civil action, the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State Court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded."

In the instant case, the Federal Removal statute was strictly followed; Notice of Removal was filed in the Federal Court; Notice of Removal (written) was given to all adverse parties; a copy of the notice was filed with the Mississippi

State Court, January 2, 2001, effecting Federal Removal, January 2, 2001.

Defendant diligently attempted to mitigate his damages by filing
(1) Motion for Stay of Divorce and Marital Assets Trial in both the Chancery Court and in the Mississippi Supreme Court; (2) Emergency Motion to Stay Divorce and Marital Assets Trial in both the Chancery Court and in the Mississippi Supreme Court; (3) Notice of Appeal; Supersedeas Bond, effecting Stay Pending Consolidated Appeals; however, no act, pleading, missive, or prayer would derail the Divorce and Marital Assets trial scheduled without jurisdiction in the Mississippi Chancery Court, May 29, 2001.

The Divorce and Marital Assets trial proceeded in Shavers v. Shavers, May 29, 2001 - June 1, 2001, in complete derogation of the exclusive authority and jurisdiction of the Federal Court, pursuant to the Federal Removal statute, Title 28:1441, et seq. USC., absent jurisdiction. Judgment of Fault Divorce was orally entered by Honorable Wes Teel, June 1, 2001, after the parties announced their settlement agreement, and the Court adopted as adequate and sufficient the Property Settlement:

“It’s also the Court’s understanding that Mrs. Shavers is going to ask permission of the Court to go forward o a divorce on the grounds of habitual, cruel and inhuman treatment It is further the Court’s understanding that Mr. Shavers is not going to contest those grounds.

In addition, both sides have asked the Court’s permission to allow them to present me with an Irreconcilable Differences Judgment and Property Settlement. I grant that, that is reserved unto them. I want you all to understand that the divorce is being settled with a Fault ground, that being habitual, cruel and inhuman treatment. If you bring me an Irreconcilable Differences Judgment and Property Settlement signed off by the parties, I will sign it, under the exact

Same terms and conditions as are announced here.

If you fail to do that, then I will enforce this and sign a divorce on fault grounds. Okay?

[See Trial Transcript, June 1, 2001, Stipulation of Property Division and Settlement, p.3]

On August 17, 2001, the Federal Court entered its Order of Remand, restoring jurisdiction in the Mississippi State Courts; however, the Chancery Court rendered a Judgment of Fault Divorce after the fault grounds were withdrawn by the parties May 29, 2001, excepting the grounds of adultery, and after the parties filed a Consent to Divorce on Irreconcilable Differences, pretermittting a fault divorce, on the ground of habitual, cruel and inhuman treatment in accordance with Section 93-5-1(7) Miss. Code Annot.

The lower Court's rendition of fault divorce on grounds against John E Shavers in lieu of Irreconcilable Differences and No Fault, denies John E. Shavers his constitutional rights of "due process of law," by the State of Mississippi, as guaranteed by the Fourteenth Amendment, United States Constitution, and therefore the Judgment of Divorce on grounds of fault against John E. Shavers is unconstitutional, null and void.

The statutory scheme of divorce in the State of Mississippi is a creature of statute. Parties, pursuant to Section 93-5-1 Miss. Code Annot. must select from the twelve fault choices available, or, in the alternative, the statutory Mississippi Irreconcilable Differences Divorce, Section 93-5-2 Miss. Code Annot.

However, Mississippi law requires the Court to have jurisdiction over the

parties and jurisdiction over the subject matter with proper venue to grant a Mississippi divorce. The lower Court, the Honorable Wes Teel, abused its discretion and committed manifest error in its finding in its Final Judgment of Divorce based upon fault that "the Court had jurisdiction over the parties and the subject matter," when, in truth, and in fact, the case was pending in Federal Court, as docketed as Civil Action: 01:CV:01. It is axiomatic that the same case may not be pending in two or more courts simultaneously.

Judicial Notice may be taken that Federal Removal in Acknowledged s acknowledged by the Mississippi Supreme Court, in its February 8, 2001,

ORDER

This matter cam before a panel of Banks, P.J., Smith and Cobb,JJ, On the motion of John Shavers to stay proceedings in the trial Court. Shavers has since filed in this Court a notice of federal Removal and the present motion will therefore be dismissed as moot.

IT IS THEREFORE ORDERED that the motion to stay proceedings In the trial court is hereby dismissed as moot.

SO ORDERED, this the 8th day of February, 2001.

S/
FRED L. BANKS, JR.
PRESIDING JUSTICE

The Docket Sheet filed, both Chancery Court and Mississippi Supreme Court, herein indicate the voluminous pleadings; appeals; notices of hearings; hearings; and trials conducted during the period of Federal Removal, January 2, 2001 through Order of Remand, August 17, 2001. Appellants, John E. Shavers; JESCO Construction Corporation; and JESCO Construction

Corporation of Mississippi have “highlighted” and hereby request an award of attorney fees and court costs to reimburse the parties/appellants for damages sustained, both economic and mental, for the fruitless litigation experienced while Shavers v. Shavers was removed to Federal Court.

This Honorable Court may take Judicial Notice that, at the time of the granting of the divorce between Ann B. and John E. Shavers, June 1, 2001, the Shavers’ matter was pending in the United States District Court for the Southern District of Mississippi, and the divorce rendered “*nunc pro tunc*” June 1, 2001, was rendered without Jurisdiction, and without any validity.

CONCLUSION

Based upon the foregoing statutes, cases and controlling principles of law, especially the comity between the State and Federal systems, it is plaintiff, JOHN E. SHAVERS; JESCO Construction Corporation; and JESCO Construction Corporation of Mississippi's position that Section 11-51-12 Miss. Code Annot.; and Rule 8, Mississippi Rules of Appellate Procedure, INJUNCTION/STAY PENDING APPEAL are self-operative, together with the exclusive jurisdictional provisions of the Federal Removal statute, Title 28:1441(e) USC, strictly construed, and that at all times material to this Divorce Complaint since filing of Joint Motion for Suspensive Appeal, November 1, 2000, by the Joint Appellants, and the posting of the Supersedeas Bond, January 5, 2001, the Chancery Court has lacked requisite jurisdiction to proceed as a competent court, render judgments and decrees. Two independent stay provisions have been utilized by your Appellants to impart a mandatory stay of proceedings, in the Mississippi Chancery Court, since November 1, 2000, namely, (1) the Mississippi Injunction/Stay Pending Appeal and the Federal Removal statute until the Mississippi Supreme Court renders a decision in these consolidated appeals, and releases the supersedeas bond of appellant, John E. Shavers.

It is further Appellant, John E. Shavers' position that the Judgment of Fault Divorce on the grounds of habitual, cruel and inhuman treatment, rendered orally June 1, 2001 by the Honorable Wes Teel, "*nunc pro tunc*" while the case was subject to Stay Pending Appeal in the Mississippi Supreme Court and Federally Removed, is an absolute nullity, void *ab initio*. Judgment of Divorce should be

reversed and rendered, with all costs and attorneys' fees assessed against
Ann B. Shavers, Plaintiff/Appellee for the violations of the injunctions
November 1, 2000 to present and until release of Appellant, John E. Shaver's
supersedeas bond.

Respectfully submitted,



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==

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing
was served on the following parties and counsel of record this 8th day of

April 2001, postage pre-paid, United States First Class Mail:

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**CORRECTED
CERTIFICATE OF SERVICE**

**I hereby certify that a true and correct copy of the above
and foregoing “Appellants’ Original Brief” was served on the
following parties and counsel of record this 8th day of
April 2002, postage pre-paid, United States First Class Mail.**

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